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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,396	01/10/2002	Angela M. Petroskey	AMP 0101 PUS	4654

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EXAMINER
ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/043,396	PETROSKEY, ANGELA M.	
	Examiner	Art Unit	
	Mitra Aryanpour	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 June 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 1 and 11, there is no support for the newly added limitation "said hand receiving portion being smaller than said front layer; said hand receiving portion covering a substantial portion of said user's hand to maintain it in a generally fixed position". What is disclosed in the specification (see page 6, paragraph [21] is as follows: "The hand attachment portion 22 is preferably configured in the shape of a glove. However, a variety of other configurations may be utilized including a mitten, straps, elastic band, or the like." The above statement, merely indicates that a variety of hand attachments can be attached to the rear portion. The above statement does not in anyway suggest that the hand attachment is smaller than the front layer or that it should cover a substantial portion of the user's hand. On the contrary, a glove or mitten can be made the same size as the front layer and a strap or an elastic band would hardly cover "a substantial portion" of a hand.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8-12, 14, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (5,564,122).

Regarding claim 1, Wagner discloses a training device comprising a front layer (12), a rear layer (10) and an insert portion (11) of relatively stiff material (it is made of hard plastic) disposed between the front and rear layer, and a hand-receiving portion (5) to allow receipt of a user's hand (see figure 6); said hand receiving portion (5) being smaller than the front layer and covering a substantial portion of the user's hand to maintain it in a generally fixed position. With respect to claim 2, statements of intended use are not accorded any weight when the structure is anticipated. *See In re Schreiber*, 44 USPQ 2nd 1429.

Regarding claim 3, Wagner shows the insert portion (11) to be made of plastic material (see column 2, lines 60 and 61).

Regarding claim 4, Wagner shows the front layer (12) and the rear layer (10) to be made of foam material (see column 2, lines 56-60).

Regarding claim 5, Wagner shows the rear layer to be made of two layers of Styrofoam and the front layer to be a thin foam layer (see column 2, lines 56-60; and best seen in figure 6).

Regarding claim 7, Wagner is silent as to the means for securing front, rear and insert together. Various means are well known in the relevant art. Absent a showing of new or

unobvious results it would have been obvious to use any well known means including glue for securing the various layers of Wagner's training device, so that the layers remain securely in place upon impact.

Regarding claims 8 and 9, Wagner shows a covering surrounding the front, rear and insert portion, wherein the covering is made of fabric material (see column 2, lines 61-63; also figure 6).

Regarding claim 10, Wagner shows the hand-receiving portion is a glove (see column 2, lines 29-31).

Regarding claim 11, see the comments for claims 1,4, 5 and 10. The recitation of *A volleyball blocking pad* has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding claim 12, see the comments for claim 4.

Regarding claim 14, see the comments for claim 5.

Regarding claim 17, see the comments for claim 10.

Regarding claim 18, see the comments for claims 11.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 6, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (5,564,122).

Regarding claim 6, Wagner shows the insert portion (11) is made of hard plastic. As it is well known in the plastic art, all plastics provide in combination some degree of flexibility and rigidity. The degree of flexibility and rigidity vary depending on the shore hardness value of the plastic.

Regarding claim 13, see the comments for claim 6.

Regarding claim 15, see the comments for claims 2 and 6.

Regarding claim 16, Wagner does not expressly indicate that the covering (13) is removable, but indicates that the cover is closed at the upper end by lacing (14), and as best seen in figure 6, it appears that the cover is removable.

Response to Arguments

7. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cohen shows an athletic glove having a front layer, a rear layer and an insert portion disposed between the front and rear layer (see figures 1 and 2); Boliard and Furey both show hand covering for Volleyball practice.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul T Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

MA
15 August 2003

Supervisory Patent Examiner
Group 3700